IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2717 OF 2002

Kumkum Food Products Limited
& Anr. ... .. Petitioners

Vs.

Maharashtra State Financial
Corporation. ... .. Respondent

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Shri Niranjan Lapashiya i/b M/s.Niranjan & Co.for the petitioners.

None for the respondent.

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CORAM : R.M.S.KHANDEPARKAR &

NARESH H.PATIL, JJ

DATED : 23RD AUGUST, 2006

P.C.

1. Heard. The petitioners challenge the taking over of possession of the assets of the petitioners in exercise of powers under Section 29 of the State Financial Corporations Act, 1951, hereinafter called as "the said Act", being malafide and of misuse of powers. The allegation of malafide and misuse of powers is on three grounds. The first ground is that the possession of the assets of the petitioners in exercise of powers under Section 29 of the said Act was taken over even before the rejection of the

request for one time settlement. Secondly that the advertisement for sale of the property was issued even before taking over of possession in exercise of powers under Section 29 of the said Act, and thirdly that the respondent failed to take note of the fact that till 1997 the petitioners were regular in repayment of loan amount and had even cleared 4 short-term loan accounts out of 5 short-term loan accounts and 2 long-term loan accounts out of 5 long-term loan accounts. Besides, from the remaining 3 long-term loan accounts, there is substantial amount repaid in relation to the two of long-term loan accounts.

2. As regards the first ground of challenge about taking over possession of the assets of the petitioners prior to rejection of the proposal for one time settlement, the records apparently disclose that pursuant to the request in that regard by the petitioners under their application dated 12th May, 2001, the respondent had informed the petitioners by its letter dated 31st May, 2001 to furnish certain details within 15 days with the warning that in case of failure to do so, the application/request for one time settlement would be treated as withdrawn by the petitioners. Undisputedly, necessary information as was called for by the respondent under its letter

dated 31st May, 2001 was not furnished by the petitioners within the said period of 15 days. In that regard, attention was sought to be drawn by the learned advocate for the petitioners to the letter dated 25th October, 2001 while contending that the fact that the requirement of the letter dated 31st May, 2001 was complied with by the petitioners was brought to the notice of the respondent under the said letter and it is only thereafter, i.e. 7th November, 2001, the proposal for one time settlement was sought to be rejected. It is pertinent to note that the letter dated 25th October, 2001 was received by the office of the Maharashtra State Financial Corporation only on 29th October, 2001, the date on which the notice under Section 29 of the said Act was issued to the petitioners. The records nowhere disclose that the letter dated 25th October, 2001 was served upon the respondent prior to issuance of the notice under Section 29 of the said Act. There is every reason to believe that the letter dated 25th October, 2001 was submitted by the petitioners as a counter to the notice issued under Section 29 of the said Act on 29th October, 2001. Though under the letter dated 7th November, 2001, the petitioners were informed about the non acceptance of the proposal for one time settlement for Rs.99 lakhs, the fact remains that

pursuant to the request for one time settlement made by the petitioners under letter dated 12th May, 2001, the respondent had directed the petitioners to furnish certain details within the specified period and the petitioners failed to comply with the said requirement. It is also a matter of record that the letter dated 31st May, 2001 clearly warned the petitioners that in case of failure to comply with the said requirement, the proposal for one time settlement would be deemed to have been withdrawn by the petitioners. Being so, merely because, under the letter dated 7th November, 2001, the respondent sought to reply the letter dated 25th October, 2001 which was received by the respondent on 29th October, 2001, that would not mean that the petitioners were for the first time made aware about the rejection of the proposal for one time settlement. The petitioners were already aware of the said situation under the letter dated 31st May, 2001 itself.

3. As regards the second ground of challenge i.e. advertisement for auction of the assets about 15 days prior to the taking over of possession, the action under Section 29 of the said Act was initiated on 29th October, 2001 much prior to the issuance of advertisement. Being so, merely because taking over

of possession of the assets was delayed beyond issuance of advertisement, that itself cannot be a sufficient ground to contend that the respondent had acted malafide or had misused of powers.

4. As regards the third ground of challenge, undoubtedly, the records disclose that till 1997, the petitioners had been repaying the loan without any occasion for the respondent to make grievance about non compliance of the obligation of the petitioners regarding repayment of loan. However, at the same time, the records undoubtedly disclose that since 1998 the petitioners had failed to repay the loan and the action under Section 29 was initiated only in the month of October, 2001 nearly after three years from the first default. In such circumstances, the allegations regarding malafide are not at all corroborated by any piece of material on record. The action on the part of the respondent therefore cannot be said to be either malafide or in misuse of powers. The facts clearly justify the action taken by the respondent, and therefore, there is no case for interference in writ jurisdiction. The petition is, therefore, rejected.

(R.M.S.KHANDEPARKAR, J)

(NARESH H.PATIL, J)